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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि वह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 8th May, 1979:—

BILL No. 67 OF 1979

A Bill further to amend the Indian Evidence Act, 1872.

By it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

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| 1 of 1872. | <p>1. This Act may be called the Indian Evidence (Amendment) Act, 1979.</p> <p>2. In section 32 of the Indian Evidence Act, 1872 (hereinafter referred to as the principal Act), in the opening portion, after the words "or who has become incapable of giving evidence", the words "or who is kept out of the way by the adverse party" shall be inserted.</p> <p>3. In section 33 of the principal Act, in the proviso, for the word "proceeding", the words "first proceeding" shall be substituted.</p> <p>4. In Chapter II of the principal Act, under the heading "STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES", after section 33, the following section shall be inserted, namely:—</p> | <p>Short title.</p> <p>Amendment of section 32.</p> <p>Amendment of section 33.</p> <p>Insertion of new section 33A.</p> |
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Evidence recorded in relation to a person whose conduct is under inquiry or whose reputation is affected.

“33A. Where—

(a) by or under any law for the time being in force, any authority is empowered to hold an inquiry into any question of fact and to take evidence on oath for the purposes of such inquiry, and

(b) any person whose conduct such authority considers it necessary to inquire into or whose reputation is likely to be prejudicially affected by the inquiry—

(i) has, by or under such law, a right to cross-examine any witness whose evidence is taken in the course of such inquiry, and

(ii) has had a reasonable opportunity of doing so,

then, the evidence given by such witness in such inquiry (notwithstanding that such inquiry is not a judicial proceeding of the nature referred to in section 33) is relevant for the purpose of proving, subsequently in a judicial proceeding between the person referred to in clause (b) and any other person (including the Government) who has, by or under such law, a right of cross-examining the witness and who has had reasonable opportunity of doing so, or their representatives in interest, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable:

Provided that the questions in issue were substantially the same in such inquiry as in the judicial proceeding.”

Amendment of section 34.

5. In section 34 of the principal Act, for the words “such statements”, the words “such entries” shall be substituted.

Amendment of section 35.

6. In section 35 of the principal Act, for the portion beginning with the words “and made by a public servant” and ending with the words “is itself a relevant fact”, the following shall be substituted, namely:—

“and made by—

(a) a public servant in the discharge of his official duty, or

(b) any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept,

is itself a relevant fact”.

Amendment of section 37

7. In section 37 of the principal Act, for the portion beginning with the words “any statement of it” and ending with the words “is a relevant fact”, the following shall be substituted, namely:—

“any statement of it, made in a recital contained—

(a) in any Central Act, Provincial Act or a State Act, or

(b) in a Government notification appearing in the Official Gazette, or

(c) as respects the period before the 15th day of August, 1947—

(i) in any Act of Parliament of the United Kingdom, or

(ii) in a Government notification appearing in any printed paper purporting to be the London Gazette or the

Government Gazette of any Dominion, colony or possession of His Majesty, or

(iii) in a notification by the Crown Representative appearing in the Official Gazette,

is a relevant fact".

8. In section 38 of the principal Act, after the words "a law of any country", the words "other than India" shall be inserted.

Amend-
ment of
section
38.

STATEMENT OF OBJECTS AND REASONS

In its Seventy-fourth Report, the Law Commission considered the question as to the circumstances under which statements made by witnesses before Commissions of Inquiry and other statutory bodies could be rendered admissible in evidence in subsequent judicial proceedings when the witnesses were not available. The Commission recommended amendment of the Indian Evidence Act to make such statements admissible in certain limited circumstances. Statements made before authorities holding inquiries, even though they are not judicial proceedings, would be admissible against a person if the person whose conduct such authority was inquiring into, or whose reputation was likely to be prejudicially affected by the inquiry, had a legal right to cross-examine the witnesses whose evidence was taken in the course of such inquiry and had a reasonable opportunity to do so. In such circumstances, where the witness who deposed before the authority holding the inquiry is dead, or his testimony cannot otherwise be secured, then the evidence given in such inquiry is relevant in a subsequent judicial proceeding if the questions in issue are substantially the same in the inquiry and the second proceeding.

2. The Bill seeks to give effect to this recommendation by inserting a new section 33A in the Indian Evidence Act.

3. In its Sixty-ninth Report on the Indian Evidence Act, the Law Commission had made various recommendations. Some of the amendments, especially those relating to sections 32, 33, 34, 35, 37 and 38 are relatively minor and clarificatory in nature. They are also non-controversial. It is proposed to give effect to these recommendations which also deal with statements by persons who cannot be called as witnesses, and statements made under special circumstances.

4. The Bill seeks to achieve the above objects.

SHANTI BHUSHAN.

NEW DELHI;

The 22nd April, 1979.

AVTAR SINGH RIKHY,
Secretary.